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RULE PROPOSAL
CORRECTIONS
STATE PAROLE BOARD
PAROLE BOARD RULES

Proposed Readoption with Amendments: N.J.A.C. 10A:71

Proposed New Rule: N.J.A.C. 10A:71-6.12

Authorized By: New Jersey State Parole Board, John D'Amico, Jr., Chairman.

Authority: N.J.S.A. 30:4-123.48(d).

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2004-382.

Submit comments by December 3, 2004 to:

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New Jersey State Parole Board

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The agency proposal follows:

Summary

The Parole Act of 1979 (N.J.S.A. 30:4-123.45 et seq.), which became effective April 21, 1980, created a full-time State Parole Board. The Board determines if, when and under what conditions inmates subject to its jurisdiction may be released on parole or returned to an institution from parole following violation of parole terms or conditions. The Board is authorized by the Parole Act to promulgate reasonable rules and regulations, consistent with the Parole Act, as may be necessary for the proper discharge of its responsibilities. The Board's rules are specified in the New Jersey Administrative Code (N.J.A.C. 10A:71) and pursuant to N.J.S.A. 52:14B-5.1c are scheduled to expire July 6, 2005. The Board has, therefore, reviewed its rules and proposes to readopt same with amendments and proposes for adoption a new rule (N.J.A.C. 10A:71-6.12). The Board's rules pertain to Board organization; general administrative provisions; parole release hearings; administrative appeals; suspending or rescinding a parole release date; supervision; revocation of parole; and certificate of good conduct.

As a result of the review process, the Board proposes various amendments to the present rules and a new rule to effectuate recent amendments to N.J.S.A. 2C:43-6.4. Several amendments merely correct references to Administrative Code citations and merely clarify existing rules. The significant substantive and procedural amendments and the new rule are as follows:

1. The proposed amendments to N.J.A.C. 10A:71-1.1 provide for the following:
 - (a) insertion of the term administrator in the definition of "Chief Executive

Officer"; (b) clarification in the definition of "Division of Parole" that supervision is provided to certain juvenile offenders, and offenders serving a term of mandatory parole supervision for life; (c) deletion in the definition of "Division of Parole" to references to the Furlough program and any other inmate community program; and (d) insertion of the definition of "parolee" of adult offenders serving a term of mandatory parole supervision pursuant to the "No Early Release Act," N.J.S.A. 2C:43-7.2(c), or sentenced to parole supervision for life.

2. The proposed amendment to N.J.A.C. 10A:71-1.3 deletes the provision which authorized one member of a Board panel to constitute a quorum of the panel.

3. The proposed amendments to N.J.A.C. 10A:71-3.7 delete several references to the Division of Parole; delete from the preparole report required to be prepared by the chief executive officer of an institution any psychological or psychiatric report; require that a psychological or a psychiatric evaluation report is to be prepared on an inmate's case; and delete reference to a Board panel or the Board requiring the Department of Corrections to perform a supplemental in-depth evaluation of an inmate. Reference to the Division of Parole is no longer deemed necessary as the Division of Parole is a unit within the Board. The preparation of standard and in-depth mental health evaluations are now being performed by a service provider under contract with the Board, through the Department of the Treasury, and the preparation of said evaluations are no longer the responsibility of the Department of Corrections.

4. The proposed amendments to N.J.A.C. 10A:71-3.11 clarify that a hearing officer, Board panel or Board shall consider, when evaluating a case, the following: (a) commission of an offense (amended from a crime) while incarcerated; (b) statements by institutional staff relating to the inmate's failure to cooperate in his or her own rehabilitation or there being a reasonable expectation that the inmate will violate a condition of parole; and (c) statements by the inmate relating to the inmate's failure to cooperate in his or her own rehabilitation or there being a reasonable expectation that the inmate will violate a condition of parole. References to the failure to cooperate in one's own rehabilitation and there being a reasonable expectation of violation of a condition of parole reflect the standards of parole consideration in the cases of inmates committing crimes on or after August 19, 1997.

5. The proposed amendments to N.J.A.C. 10A:71-3.21 authorize the Board panel conducting the annual review hearing to make an appropriate reduction in the previously established future parole eligibility term in lieu of making a recommendation to the three-member Board panel or the Board for a reduction in the future parole eligibility term.

6. A proposed amendment to N.J.A.C. 10A:71-3.52 clarifies that, in interstate corrections compact cases, the Department of Corrections need only request that an out-of-State parole or release authority to conduct a hearing on behalf of the Board when directed by the Board to do so.

7. The proposed amendments to N.J.A.C. 10A:71-3.54 provide that an offender also sentenced to parole supervision for life, who is released on parole prior to the expiration of the sentence of incarceration, is also subject to the conditions specified in subsections (d), (e), (g), (h) and (i) of proposed new rule N.J.A.C. 10A:71-6.12.

8. The proposed amendments to N.J.A.C. 10A:71-6.1 correct the title and statutory citation of the new interstate compact which governs the transfer of supervision for adult offenders between states; clarify that juvenile parolees released from an adult correctional facility are under the supervision of the Division of Parole; and clarify that juvenile parolees released from a juvenile correctional facility are under the supervision of the Juvenile Justice Commission.

9. The proposed amendments to N.J.A.C. 10A:71-6.4 establish the immediate notification to a parole officer of the parolee's change in employment status as a separate general condition of parole; establish the submission to a warrantless search by the assigned parole officer as a general condition of parole; clarify that the parole certificate of an inmate subject to N.J.S.A. 2C:43-6.4 shall also include the conditions specified in subsections (d), (e), (g), (h) and (i) of proposed new rule N.J.A.C. 10A:71-6.12 if appropriate; and clarify that a special condition requiring "employer notification" does not become effective until affirmed by the appropriate Board panel. The search of a parolee will be conducted in accordance with established procedures as specified in N.J.A.C. 10A:72-6.

10. The proposed amendments to N.J.A.C. 10A:71-6.11 provide for the following: (a) the clarification that the provision of this section apply to the cases of offenders who committed an enumerated offense in N.J.S.A. 2C:43-6.4 prior to January 14, 2004; (b) the requirement that the offender obtain the permission of the assigned parole officer prior to serving, accepting or engaging in any volunteer activity; (c) the deletion of several general conditions of supervision no longer deemed necessary; (d) the establishment of a general condition of supervision which requires the offender to refrain from any contact (written or otherwise) with any group, club, association that engages in, promotes or encourages illegal or sexually deviant behavior; (e) the establishment of a general condition requiring the offender to submit to a warrantless search by the assigned parole officer; (f) the clarification that the application of certain conditions are applicable to those offenders whose conduct was originally determined by the sentencing court to be repetitive and compulsive and who are classified as a high risk to re-offend by the prosecutor and said determination of the prosecutor is affirmed by the appropriate court; (g) the deletion of the condition requiring offenders whose conduct was originally determined by the sentencing court to be repetitive and compulsive and who are classified as a high risk to re-offend to submit to a warrantless search by the assigned parole officer; (h) the deletion of standards for the search of certain offenders without a warrant; and (i) the requirement that the search of an offender serving a special sentence of community supervision for life be conducted in accordance with the standards established in N.J.A.C. 10A:72-6.

11. The proposed amendment to N.J.A.C. 10A:71-7.7 deletes reference to a court rule which had been repealed and inserts reference to the pro bono assignment program which presently exists in each judicial vicinage.

12. The proposed amendment to N.J.A.C. 10A:71-7.9 clarifies that the hearing officer orders the immediate withdrawal of a warrant on file against a parolee in custody and is not actually the person that withdraws the warrant.

13. On January 14, 2004, N.J.S.A. 2C:43-6.4 was amended to clarify that the lifetime community supervision for sex offenders is parole supervision, which commences immediately upon the offender's release from incarceration, and is to be supervised like any other period of parole. An offender serving a special sentence of parole supervision for life is subject to the conditions of parole as determined by the State Parole Board and supervision is to be provided by the Division of Parole of the State Parole Board. As amended, N.J.S.A. 2C:43-6.4 enables the State Parole Board to treat a violation of a condition of parole supervision for life like any other parole violation. An offender is, therefore, subject to the parole revocation process and subject to being placed in custody for 12 to 18 months by the administrative action of the State Parole Board for violation of the terms and conditions of parole supervision for life. Based on the amendments to N.J.S.A. 2C:43-6.4 the State Parole Board proposes N.J.A.C. 10A:71-6.12 as a new rule. The provisions of the new rule are essentially based on the statutory amendments and include the establishment of the general conditions of parole supervision for life as well as a schedule of terms to be served in the custody of the Department of Corrections upon the revocation of an offender's parole supervision for life status.

The notice of proposal is not subject to the calendar requirements of N.J.S.A. 52:14B-3(4) and N.J.A.C. 1:30-3.3(a) because the Board has provided a 60-day comment period and, therefore, this notice is exempted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The rules proposed for readoption with amendments will affect the internal operations of the State Parole Board. One member of a panel shall no longer constitute a quorum of the panel. The Board through staff will be required to monitor the request for mental health evaluations to be conducted by the contracted service provider, the preparation of an evaluation report by the contracted service provider and the receipt of the evaluation report by the Board. A Hearing Officer, a Board panel and the Board will be required to consider, when evaluating a case, whether an offense has been committed by the inmate while incarcerated and statements by institutional staff and by the inmate relating to the inmate's failure to cooperate in his or her own rehabilitation or there being a reasonable expectation that the inmate will violate a condition of parole. A Board panel conducting an annual review hearing will be authorized to make an appropriate reduction in the previously established future parole eligibility term in lieu of making a recommendation to the three-member Board panel or the Board for a final determination as to whether there will be a reduction in the future parole eligibility term. The rendering of an immediate determination by the Board panel and notification to the offender will eliminate the additional processing of the case by Board staff.

The Department of Corrections will be affected in that the Department is no longer required to have prepared standard and in-depth mental health evaluation reports for the parole hearing process. The conducting of mental health evaluations and the preparation of mental health evaluation reports are now performed by a service provider under contract with the State Parole Board, through the Department of the Treasury. The Department of Corrections would be required under the proposed new rule to conduct an evaluation at the Audit Diagnostic and Treatment Center in the cases of certain parole supervision for life offenders. In interstate compact cases, the Department of Corrections will no longer be required to request that an out-of-State parole or release authority conduct a hearing on behalf of the Board. A request for such a hearing in an offender's case need only be made when directed by the Board.

Offenders on parole status and community supervision for life status will be affected in that the general conditions of parole supervision and the general conditions of community supervision for life have also been modified and include as a general condition, the requirement that the offender submit to a warrantless search (such a general condition is also included in proposed new rule N.J.A.C. 10A:71-6.12, parole supervision for life). Further, a parolee will be required to immediately notify the assigned parole officer of the parolee's change in employment. An offender who is released on parole prior to the expiration of sentence and who is subject to parole supervision for life pursuant to N.J.S.A. 2C:43-6.4 will be required to comply with conditions as specified in paragraphs (d), (e), (g), (h) and (i) of proposed new rule N.J.A.C. 10A:71-6.12, as appropriate. An offender on community supervision for life status will be required to obtain permission of the assigned parole officer prior to serving, accepting or engaging in any volunteer activity and required to refrain from any contact (written or otherwise) with any groups, club, association that engages in, promotes or encourages illegal or sexually deviant behavior.

In the case of parolees, the imposition of a special condition of employer notification by the Division of Parolee does not become effective until the parolee's case has been reviewed by the appropriate Board panel and the special condition has been affirmed by the Board panel.

In the case of certain offenders serving an extended future parole eligibility term, the special panel conducting the annual review hearing will be authorized to determine whether a reduction will occur in the future parole eligibility term. The offender will, therefore, receive immediate notice of such a reduction, if granted. Under present procedure the special panel may make a recommendation for a reduction in the future parole eligibility term. The recommendation must be reviewed by the original decision-making body and upon a determination being made the offender is then notified if a reduction in the future parole eligibility term is to occur.

The proposed new rule, which is based on the provisions of N.J.S.A. 2C:43-6.4, as amended effective January 14, 2004, will impact on those offenders who are required to be sentenced to a special sentence of parole supervision for life. Those offenders sentenced to parole supervision for life will be required to comply with the general conditions of supervision as specified in the proposed new rule, N.J.A.C. 10A:71-6.12. The general conditions are extensive and are similar to the general conditions that apply to offenders sentenced to community supervision for life under the prior provisions of N.J.S.A. 2C:43-6.4.

The Division of Parole will be required to insure that offenders comply with the conditions of supervision and assess whether a violation should result in the implementation of the parole revocation hearing process and/or referral to the appropriate Prosecutor's Office. An offender who fails to comply with the conditions of parole supervision for life is subject, in addition to prosecution for the commission of a fourth degree offense, to the administrative parole revocation hearing process. An offender upon revocation by the State Parole Board of his parole supervision for life status will be required to serve a defined period of time in the custody of the Commissioner of the Department of Corrections. Upon the completion of the established time period, the offender will be released from confinement, unless serving another sentence, to continue the service of his parole supervision for life status.

Economic Impact

It is not anticipated that the rules proposed for readoption with amendments will have an economic impact. Though the Department of Corrections is no longer responsible for the conducting of mental health evaluations and the preparation of mental health evaluation reports for the parole hearing process, the funding for said services has been transferred from the Department of Corrections' annual budget to the State Parole Board's annual budget. These services are now provided by a private vendor under contract with the State Parole Board through the Department of the Treasury.

The economic impact of the proposed new rule cannot be readily identified. It is anticipated, however, that primary impact, which would be as a result of the statutory provision on which proposed new rule N.J.A.C. 10A:71-6.12 is based, will be incurred by the Department of Corrections and that a secondary impact will be incurred by the State Parole Board. The State Parole Board will be required to conduct administrative parole violation hearings on those offenders who violate a condition(s) of parole supervision for life and are returned to custody. The Department of Corrections will be required to house parole supervision for life offenders who have their parole status revoked and are returned to custody for the service of a defined time period.

The new rule does require that evaluations be conducted at the Adult Diagnostic and Treatment Center in the cases of certain parole supervision for life cases. The Department of Corrections may, therefore, incur an expense in the conducting of these evaluations.

Due to the statutory provisions relating to parole supervision for life being effective January 14, 2004, the economic impact on the Department of Corrections and the State Parole Board may not be realized for a significant

time period.

Federal Standards Statement

The readoption of existing rules with amendments and new rule is not proposed under the authority of or in order to implement, comply with or participate in any program established under Federal law or under State statute that incorporates or refers to Federal law, standards or requirements. An analysis of the proposed readoption of existing rules with amendments and new rule pursuant to Executive Order No. 27(1994), P.L. 1995, c.65 is, therefore, not required.

Jobs Impact

The rules proposed for readoption with amendments and new rule pertain to the Board's execution of its statutory authority to grant, deny and revoke parole in the cases of adult, young adult, and juvenile offenders; the administration of the parole process; and the supervision of offenders on mandatory parole supervision status, community supervision for life status and parole supervision for life status. It is not anticipated that the existing rules proposed for readoption, the proposed amendments and the proposed new rule will result in the generation or loss of jobs.

Agriculture Industry Impact

The rules proposed for readoption with amendments and the new rule will not have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Statement

The rules proposed for readoption with amendments and the new rule impose no reporting, recordkeeping, or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The existing rules with proposed amendments and new rule pertain to the functions and responsibilities of the State Parole Board. A regulatory flexibility analysis is, therefore, not required.

Smart Growth Impact

The rules proposed for readoption with amendments and new rule will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10A:71.

Full text of the proposed amendments and new rule follows :

SUBCHAPTER 1. BOARD ORGANIZATION

NJ ADC 10A:71-1.1

10A:71-1.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

...
"Chief Executive Officer" shall mean any administrator, warden, superintendent or keeper of any county correctional facility or State correctional facility.

...
"Division of Parole" shall mean the unit within the State Parole Board responsible for the supervision of adult and juvenile offenders released on parole by the State Parole Board from an adult correctional facility ; the supervision of parolees who are serving a mandatory period of parole supervision pursuant to N.J.S.A. 2C:43-7.2(c); the supervision of parolees from other states who have been accepted under the terms of the Adult and Juvenile Compacts for the Supervision of Parolees and Probationers; the supervision and/or monitoring of inmates and parolees assigned to the Electronic Monitoring Program [and Furlough Program]; the supervision of offenders sentenced to community supervision for life; the supervision of offenders sentenced to parole supervision for life; the supervision of offenders sentenced to a period of mandatory parole supervision; the supervision of juvenile offenders released from an adult correctional facility for the service of a term of post-incarceration; and the supervision of certain Executive Clemency cases [; and the supervision of any other inmate participating in a community program such as the Work Release Program].

...
"Parolee" shall mean any inmate who is subject to the parole jurisdiction of the Board and who has been released on parole. "Parolee" shall also include a juvenile offender under supervision during a term of post-incarceration ; an adult offender under supervision serving a term of mandatory parole supervision pursuant to N.J.S.A. 2C:43-7.2(c); and an adult offender under supervision serving a special sentence of parole supervision for life .

...

NJ ADC 10A:71-1.2

10A:71-1.2 Board meetings

(a)-(g) (No change.)

(h) Except as provided in N.J.A.C. 10A:71- [1.4] 1.5 , a majority of the Board members shall constitute a quorum of the Board.

(i)-(j) (No change.)

NJ ADC 10A:71-1.3

10A:71-1.3 Parole case reviews, release hearings, board panel and board hearings

(a)-(c) (No change.)

[(d) Except as provided in N.J.A.C. 10A:71-1.4, one member of the Board panel shall constitute a quorum of the panel.]

Recodify existing (e)-(f) as (d)-(e) (No change in text.)

NJ ADC 10A:71-1.10

10A:71-1.10 Public notice regarding proposed rulemaking

(a) The Board shall provide for the following public notice for all rulemaking activity in accordance with N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:30.

1.-2. (No change.)

3. The notice of rule proposal as filed or a statement of the substance of the proposed action shall be provided to the following:

i.-ii. (No change.)

iii. A distribution list which shall include, but not be limited to, the Office of the Governor, the Commissioner, the Juvenile Justice Commission, the Department of Law and Public Safety, County Prosecutors, the Office of the Public Defender, Boards of Trustees of the adult, young adult and juvenile correctional complexes, the Chief Executive Officers of State and county correctional facilities, victim advocacy groups, the American Civil Liberties Union of New Jersey, the New Jersey Association [of] on Corrections and inmate advocacy groups; and

iv. (No change.)

(b)-(c) (No change.)

SUBCHAPTER 3. PAROLE RELEASE HEARINGS

NJ ADC 10A:71-3.7

10A:71-3.7 Preparation of cases for parole hearings; adult inmates

(a) (No change.)

(b) This list shall be distributed to the chief executive officer of the institution of incarceration [,] and the Chairman of the Board of Trustees for the institution of incarceration [and to the Division of Parole].

(c) The receipt of this eligibility list by the chief executive officer of the institution of incarceration [and by the Division of Parole] shall be notice to initiate the preparation of a pre-parole report pursuant to (e) below.

(d) It shall be the responsibility of the chief executive officer to file a report concerning the inmate with the appropriate Board panel [and the Division of Parole] within 60 days of the receipt of the Board's list. In the case of an inmate identified by the Board's staff as being past eligible for parole consideration or an inmate who has an accelerated parole eligibility date pursuant to N.J.A.C. 10A:71-3.18A, the chief executive officer shall file the report on the inmate with the appropriate Board panel within 30 days of receipt of notice that the inmate is past eligible for parole consideration or has an accelerated parole eligibility date. If the report is not filed within the aforementioned 30 or 60 day time periods, the chief executive officer shall state the reasons therefore in writing and provide such statement in the report when the report is filed with the appropriate Board panel.

(e) Such report shall consist of the following information:

1.-3. (No change.)

4. A complete report on the inmate's social, physical and mental condition [, including any psychological or psychiatric reports requested by the Board] and

reports of the inmate's institutional housing, work, education and program participation.

[5. An investigative report by the Division of Parole on the inmate's parole plans.]

Recodify existing 6.-14. as 5.-13. (No change in text.)

(f) In addition to the information required pursuant to (e) above and except as otherwise provided for in (h) or (i) below, a psychological or a psychiatric evaluation report shall be prepared by a mental health professional in an inmate's case as directed by the Board.

[(f)] (g) (No change in text.)

[(g) In addition to the information required pursuant to (e) above, the report shall, pursuant]

(h) Pursuant to N.J.S.A. 30:4- 123.54(b)1, [include] an in-depth psychological evaluation of the inmate shall be prepared in any case in which the inmate was convicted of a first or second degree crime involving violence and:

1.-3. (No change.)

[(h) In addition to any psychological or psychiatric evaluation report(s) submitted pursuant to (e) above, a Board panel or the Board may require the Department to perform a supplemental evaluation of an in-depth nature of the inmate.]

(i)-(l) (No change.)

NJ ADC 10A:71-3.11

10A:71-3.11 Factors considered at parole hearings; adult inmates

(a) (No change.)

(b) The hearing officer, Board panel or Board shall consider the following factors and, in addition, may consider any other factors deemed relevant:

1. Commission of [a crime] an offense while incarcerated.

2.-8. (No change.)

9. Statements by institutional staff, with supporting documentation, that the inmate is likely to commit a crime if released ; that the inmate has failed to cooperate in his or her own rehabilitation; or that there is a reasonable expectation that the inmate will violate conditions of parole .

10.-16. (No change.)

17. Statements by the inmate reflecting on the likelihood that he or she will commit another crime ; the failure to cooperate in his or her own rehabilitation; or the reasonable expectation that he or she will violate conditions of parole .

18.-23. (No change.)

(c) (No change.)

NJ ADC 10A:71-3.21

10A:71-3.21 Board panel action; schedule of future parole eligibility dates for adult inmates

(a)-(e) (No change.)

(f) If a three-member Board panel or the Board establishes, in the case of an inmate sentenced pursuant to N.J.S.A. 2A:113-4 for a term of life imprisonment, N.J.S.A. 2A:164-17 for a fixed minimum and maximum term or N.J.S.A. 2C:1-1(b), a future parole eligibility date which differs from the date required by the provisions of (a) and (c) above, the inmate shall be scheduled for an annual review hearing. The first annual review hearing shall be scheduled within 18 months from the month in which the decision to deny parole was rendered. Thereafter, annual review hearings shall be scheduled every 12 months until the inmate is within seven months of the actual parole eligibility date.

1. (No change.)

2. At the conclusion of the annual review hearing, the Board panel shall:

i.-ii. (No change.)

iii. Determine whether the progress achieved by the inmate merits a reduction in the future parole eligibility date. If such determination is made, the Board Panel [shall recommend to the three-member Board panel or the Board, as appropriate, that a reduction in the future parole eligibility date be granted] is authorized to make an appropriate reduction in the future eligibility term previously established by the three-member Board panel or the Board ; or

iv.-v. (No change.)

3.-6. (No change.)

(g)-(i) (No change.)

NJ ADC 10A:71-3.33

10A:71-3.33 Post-incarceration supervision

(a)-(f) (No change.)

(g) As authorized by N.J.S.A. 2A:4A-44(d)5, a term of post-incarceration supervision may be terminated by the juvenile Board panel. Consideration to terminate the term of post-incarceration shall be in accordance with N.J.A.C. 10A:71-6.9 [(g)] (h) .

(h)-(i) (No change.)

NJ ADC 10A:71-3.52

10A:71-3.52 Interstate corrections compact and serving time out-of-state (s.t.o.s.) cases

(a) - (c) (No change.)

(d) In interstate corrections compact and s.t.o.s. cases, the Department within 30 days of notice being provided to the Department pursuant to (c) above shall request the out-of-state or Federal institutional authority to submit to the Board a report concerning the offender. The report shall consist of the information required in N.J.A.C. 10A:71-3.7(e)3 to [7] 6 .

(e) - (g) (No change.)

(h) In interstate corrections compact cases, the Department [on behalf of the Board] shall when directed by the Board request the appropriate parole or release authority to conduct a parole hearing and request that upon the conclusion of the hearing a copy of the record of the hearing, the report on the offender and any recommendation of the hearing official(s) be forwarded to the Board through the Department.

(i) - (r) (No change.)

NJ ADC 10A:71-3.54

10A:71-3.54 Rules of supervision for mandatory release cases

(a) - (k) (No change.)

(l) If an offender sentenced to N.J.S.A. 2C:43-7.2 is also sentenced to a special sentence of community supervision for life or parole supervision for life pursuant to N.J.S.A. 2C:43-6.4 and if the offender is released on parole by a Board panel or the Board prior to the expiration of the sentence of incarceration, the conditions of supervision shall include, in addition to those conditions established pursuant to N.J.A.C. 10A:7-6.4(a) and (i) and (e)2 above, the conditions as specified in N.J.A.C. 10A:71-6.11(b), (c), (e), (f) and (g) or 6.12(d), (e), (g), (h) and (i) , as appropriate.

SUBCHAPTER 6. SUPERVISION

NJ ADC 10A:71-6.1

10A:71-6.1 Administration

(a) Except as otherwise provided pursuant to the Interstate [Parole] Compact for Adult Offender Supervision (N.J.S.A. 2A:168- [14] 26 et seq.), the Interstate Compact on Juveniles (N.J.S.A. 9:23-1 et seq.) or the Witness Security Reform Act (18 U.S.C. § § 3251 et seq.), all adult and juvenile parolees released from an adult correctional facility shall at all times be under the supervision of the Division of Parole and [all] juvenile parolees released from a juvenile correctional facility shall at all times be under the supervision of the Commission in accordance with the policies and rules of the Board.

(b) - (c) (No change.)

NJ ADC 10A:71-6.4

10A:71-6.4 Conditions of parole

(a) The certificate of parole shall contain the following general conditions of parole:

1. (No change.)

2. You are to report in person to your District Parole Supervisor or his or her designated representative, or the designated representative of the Commission, immediately after you are released on parole from the institution, unless you have been given other written instructions by a designated representative of the Board [, Bureau of Parole] or Commission, and you are to report thereafter as instructed by the District Parole Supervisor or his or her designated representative, or the designated representative of the Commission.

3.-4. (No change.)

5. You are to obtain approval of your parole officer:

i. [For] Prior to any change in your residence [or employment location].

ii. (No change.)

6.-8. (No change.)

9. You are required to make payment to the [Bureau] Division of Parole or Commission, as appropriate, of any assessment, fine, penalty, lab fee or restitution imposed by the sentencing court.

10.-14. (No change.)

15. You are to immediately notify your parole officer of any change in your employment status.

16. You are to submit to a search conducted by the assigned parole officer, without a warrant of your person, place of residence, vehicle or other real or personal property within your control at any time the assigned parole officer has a reasonable, articulable basis to believe that the search will produce contraband or evidence that a condition of supervision has been violated, is being violated or is about to be violated and permit the confiscation of any contraband.

(b) In the case of an adult or young adult state inmate subject to the provisions of N.J.S.A. 2C:43-6.4, the certificate of parole shall contain as general conditions of parole, in addition to those conditions specified in (a) above, the conditions as specified in N.J.A.C. 10A:71-6.11(b), (c), (e), (f) and (g) or 6.12(d), (e), (g), (h) and (i) as appropriate .

(c)-(i) (No change.)

(j) A District Parole Supervisor, an Assistant District Parole Supervisor, the designated representative of the District Parole Supervisor or the designated

representative of the Commission may, under the circumstances specified in (f) above, impose as a special condition that the parolee notify an employer or intended employer of his or her parole status and criminal record. Imposition of the special condition shall be in accordance with the provisions of (i) above. However, the special condition shall not be deemed effective until affirmed by the appropriate Board panel.

(k) - (m) (No change.)

NJ ADC 10A:71-6.11

10A:71-6.11 Community supervision for life

(a) Pursuant to N.J.S.A. 2C:43-6.4(a), any enumerated offense committed prior to January 14, 2004, a court imposing sentence on a person who has been convicted of aggravated sexual assault, sexual assault, aggravated criminal sexual contact, kidnapping pursuant to N.J.S.A. 2C:13-1(c)2, endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of the child pursuant to N.J.S.A. 2C:24-4(a), luring or an attempt to commit any such offense shall include, in addition to any sentence authorized by the Code of Criminal Justice, N.J.S.A. 2C:1-1 et seq., a special sentence of community supervision for life.

(b) The special sentence of community supervision for life shall commence pursuant to N.J.S.A. 2C:43-6.4(b) upon the completion of the sentence imposed pursuant to the Code of Criminal Justice, N.J.S.A. 2C:1-1 et seq. An offender serving a special sentence of community supervision for life shall be supervised by the Division of Parole as if on parole and subject to any special conditions established by the appropriate Board panel and to the following general conditions. The offender shall:

1.-5. (No change.)

6. Obtain the permission of the assigned parole officer prior to any change of [address or] residence;

7.-13. (No change.)

14. Obtain the permission of the assigned parole officer prior to securing, accepting or engaging in any employment [or], business or volunteer activity and prior to a change of employment;

15. (No change.)

16. Refrain from any contact [,] (verbal, written or through a third party [,]) with the victim(s) of the offense unless contact is authorized by the assigned parole officer;

17. (No change.)

[18. Permit the assigned parole officer to visit the offender at any time at home or elsewhere and permit confiscation of any contraband observed in plain view by the parole officer;

19. Notify, as directed by the assigned parole officer, an employer or any third party of the offender's criminal record or personal history or

characteristics, and permit the parole officer to make such notifications and to confirm compliance with such notification requirement;

20. Comply with any other reasonable instruction or directive given by the assigned parole officer;

21. Comply with any special condition imposed by the District Parole Supervisor, an Assistant District Parole Supervisor, or the designated representative of the District Parole Supervisor and which is affirmed by the State Parole Board; and]

[22.] **18.** Refrain from behavior which results in the issuance of a final restraining order pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et seq. **i**

19. Refrain from any contact (written or otherwise) with any group, club, association or organization that engages in, promotes or encourages illegal or sexually deviant behavior; and

20. Submit to a search conducted by the assigned parole officer, without a warrant, of the offender's person, place of residence, vehicle or other real or personal property within the offender's control at any time the assigned parole officer has a reasonable articulable basis to believe that the search will produce contraband or evidence that a condition of supervision has been violated, is being violated or is about to be violated and permit the confiscation of any contraband;

(c) - (e) (No change.)

(f) If the sentencing court determines that the conduct of the person convicted of an offense specified in (a) above was characterized by a pattern of repetitive and compulsive behavior and commits the offender to the Adult Diagnostic and Treatment Center and if upon release from confinement the appropriate county prosecutor determines pursuant to N.J.S.A. 2C:7-8 that the offender is a high risk to re-offend, **and if the appropriate court affirms the determination of the county prosecutor,** the offender serving a special sentence of community supervision for life shall, in addition to the conditions specified in (b), (c) and (e) above, submit every two years to an evaluation at the Adult Diagnostic and Treatment Center and participate in and successfully complete any program of counseling or therapy identified by treatment staff.

(g) If the sentencing court determines that the conduct of the person convicted of an offense specified in (a) above was characterized by a pattern of repetitive and compulsive behavior and if upon release from confinement the appropriate county prosecutor determines pursuant to N.J.S.A. 2C:7-8 that the offender is a high risk to re-offend, **and if the appropriate court affirms the determination of the county prosecutor,** the offender serving a special sentence of community supervision for life shall **refrain from the use of alcohol**, in addition to the conditions specified in (b), (c), (e) and (f) above. [be subject to the following conditions. The offenders shall:

1. Refrain from any use of alcohol; and

2. Submit to a search conducted by the assigned parole officer, without a warrant, of one's person, place of residence, vehicle or other personal property at any time the assigned parole officer has a reasonable or articulable basis to believe that the search will produce contraband or evidence that a condition of

supervision has been violated, is being violated or is about to be violated and permit the confiscation of any contraband.]

[(h) The search without a warrant authorized pursuant to (g)2 above shall be conducted in accordance with the following standards:

1. A search of an offender may be conducted at any time when there is a reasonable or articulable basis to believe that the search will produce contraband or evidence that a condition of supervision has been violated, is being violated or is about to be violated.

2. Searches of offenders shall be carried out in a reasonable manner and shall be reasonably related to the purpose of supervision and the function of the assigned parole officer.

3. The search of an offender shall be conducted while the offender is fully clothed and shall include, but is not limited to, the touching of the offender's body through clothing, a thorough examination into pockets, cuffs and seams, the touching of the offender's hair, and all personal property within the offender's immediate control.

4. A search of an offender may be conducted by a parole officer of either sex.

5. Parole officers are not authorized to conduct strip or body cavity searches.

6. Offenders may be subject to a pat-down of the outer clothing to determine whether they are in possession of a weapon.

7. Offenders shall be searched prior to being transported by a parole officer.

8. A parole officer may conduct a search of an offender's residence when:

i. There is a reasonable or articulable basis to believe that evidence of a violation of a condition of supervision would be found in the residence or contraband which includes any item that the offender cannot possess under the conditions of supervision is located in the residence; and

ii. The search is approved by the parole officer's supervisor or circumstances exist which require immediate attention without prior approval from the supervisor.

9. Where the residence is jointly owned or shared by an offender and another person(s), the parole officer may conduct a search of the residence in accordance with (h)8 above. The parole officer may search only those objects that may reasonably be concluded to be owned or possessed by the offender and may search those areas of the residence that are jointly shared by both the offender and the other person, even if that person(s) objects to the search.

10. A parole officer may not conduct a search of the offender's residence under any circumstances unless the offender or an adult member of the household is physically present.

11. Forcible entry by a parole officer into the residence of an offender for the purpose of conducting a search for contraband or other evidence of the commission of an offense is prohibited.

12. A parole officer may stop and conduct a search of a motor vehicle owned by an offender or a motor vehicle not owned but driven by an offender where:

i. There is a reasonable or articulable basis to believe that evidence of a violation of a condition of supervision would be found in the motor vehicle or contraband which includes any item that the offender cannot possess under the conditions of supervision is located in the vehicle; and

ii. The search is approved by the parole officer's supervisor or circumstances exist which require immediate action without prior approval from the supervisor.

13. In an authorized motor vehicle search, a parole officer may search all objects that appear to be owned or possessed by the offender.

14. The parole officer shall record incidents in which a search of an offender, residence or motor vehicle was conducted in the chronological supervision report. The following information shall be included in the chronological supervision report:

i. A description of the events leading up to the search;

ii. The parole officer's reasonable or articulable basis for the search;

iii. A description and the disposition of any items, articles, or materials determined to be contraband found as a result of the search; and

iv. Any other relevant facts or comments about the search.

(i) Any contraband confiscated pursuant to (b)18 and (g)2 above shall be processed in accordance with the following standards:

1. The parole officer making a seizure of contraband from an offender shall submit criminal contraband to the local law enforcement jurisdiction or county prosecutor's office. All other contraband shall be retained in the custody of the parole officer.

2. The parole officer shall record the incident, including the description and disposition of the contraband in the chronological supervision report.

3. Precautions shall be taken to assure the continuity of possession of

contraband in accordance with accepted legal procedures.]

Recodify existing (j)-(p) as (h)-(n) (No change in text.)

(o) The search of an offender serving a special sentence of community supervision for life shall be conducted in accordance with N.J.A.C. 10A:72- 6.

NJ ADC 10A:71-6.12

10A:71-6.12 Parole supervision for life

(a) Pursuant to N.J.S.A. 2C:43-6.4(a), any enumerated offense committed on or after January 14, 2004, a court imposing sentence on a person who has been convicted of aggravated sexual assault, aggravated criminal sexual contact, kidnapping pursuant to N.J.S.A. 2C:13-1(c)2, engaging in sexual conduct which would impair or debauch the morals of a child pursuant to N.J.S.A. 2C:24-4(a), endangering the welfare of a child pursuant to N.J.S.A. 2C:24-4(b)3, luring or an attempt to commit any of these offenses shall include, in addition to any sentence authorized by the Code of Criminal Justice, N.J.S.A. 2C:1-1 et seq., a special sentence of parole supervision for life.

(b) The special sentence of parole supervision for life shall commence pursuant to N.J.S.A. 2C:43-6.4(b) immediately upon the offender's release from incarceration. If the offender is serving a sentence of incarceration for another offense at the time the offender completes the custodial portion of the sentence imposed on the present offense, the special sentence of parole supervision for life shall not commence until the offender is actually released from incarceration for the other offense.

(c) Pursuant to N.J.S.A. 2C:43-6.4(b), an offender sentenced to a special sentence of parole supervision for life shall remain in the legal custody of the Commissioner. The offender shall be supervised by the Division of Parole and shall be subject to the provisions and conditions established pursuant to (d) below; subject to any special conditions established by the appropriate Board panel; and subject to any conditions imposed by the sentencing court.

(d) An offender sentenced to a special sentence of parole supervision for life shall comply with the following:

1. Obey all laws and ordinances;

2. Report to the assigned parole officer as instructed;

3. Notify the assigned parole officer immediately after any arrest, after being served with or receiving a complaint or summons and after accepting any pre-trial release including bail;

4. Notify the assigned parole officer immediately upon the issuance by the appropriate court, pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et seq., of an order granting emergency relief, a temporary or final restraining order or an order establishing conditions of release or bail in a criminal matter or offense arising out of a domestic violence situation, and comply with any condition established within the respective order until the order is dissolved by the appropriate court or until a condition is modified or discharged by the appropriate court;

5. Reside at a residence approved by the assigned parole officer;

6. Obtain the permission of the assigned parole officer prior to any change of residence;

7. Obtain the permission of the assigned parole officer prior to leaving the state of the approved residence for any purpose;

8. Refrain from owning or possessing any firearm, as defined in N.J.S.A. 2C:39-1f, for any purpose;

9. Refrain from owning or possessing any weapon enumerated in N.J.S.A. 2C:39-1r;

10. Refrain from the purchase, use, possession, distribution or administration of any narcotic or controlled dangerous substance, controlled dangerous substance analog, imitation controlled dangerous substance or any paraphernalia related to such substances except as prescribed by a physician;

11. Cooperate in any medical and/or psychological examination or tests as directed by the assigned parole officer;

12. Participate in and successfully complete an appropriate community or residential counseling or treatment program as directed by the assigned parole officer;

13. Submit to drug or alcohol testing at any time as directed by the assigned parole officer;

14. Obtain the permission of the assigned parole officer prior to securing, accepting or engaging in any employment, business or volunteer activity and prior to a change of employment;

15. Notify the assigned parole officer immediately of any change in employment status;

16. Refrain from any contact (verbal, written or through a third party) with the victim(s) of the offense unless contact is authorized by the assigned parole officer;

17. Comply with any curfew established by the assigned parole officer;

18. Refrain from behavior which results in the issuance of a final restraining order pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et seq.;

19. Refrain from operating a motor vehicle without a valid driver's license;

20. Refrain from any contact (written or otherwise) with any group, club, association or organization that engages in, promotes or encourages illegal or

sexually deviant behavior; and

21. Submit to a search conducted by the assigned parole officer, without a warrant, of the offender's person, place of residence, vehicle or other real or personal property within the offender's control at any time the assigned parole officer has a reasonable, articulable basis to believe that the search will produce contraband or evidence that a condition of supervision has been violated, is being violated or is about to be violated and permit the confiscation of any contraband.

(e) If the victim(s) of an offense specified in (a) above is a minor, an offender serving a special sentence of parole supervision for life shall, in addition to the conditions specified in (d) above, be subject to the following conditions. The offender shall:

1. Refrain from initiating, establishing or maintaining contact with any minor;

2. Refrain from attempting to initiate, establish or maintain contact with any minor; and

3. Refrain from residing with any minor without the prior approval of the assigned parole officer.

(f) The following circumstances are deemed exceptions to the conditions specified in (e) above:

1. When the minor is engaged in a lawful commercial or business activity, the offender may engage in the lawful commercial or business activity, provided the activity takes place in an area open to the public view;

2. When the minor is in the physical presence of his or her parent or legal guardian;

3. When the offender is present in a public area, as long as the offender is not associating with a minor, and the public area is not one frequented mainly or exclusively by minors; or

4. When the appropriate court may authorize contact with a minor.

(g) If the sentencing court determines that the conduct of the person convicted of an offense specified in (a) above was characterized by a pattern of repetitive and compulsive behavior and commits the offender to the Adult Diagnostic and Treatment Center for a program of specialized treatment, the offender serving a special sentence of parole supervision for life shall, in addition to the conditions specified in (d) and (e) above, participate in and successfully complete any program of counseling or therapy identified by the treatment staff of the Adult Diagnostic and Treatment Center.

(h) If the sentencing court determines that the conduct of the person convicted of an offense specified in (a) above was characterized by a pattern of repetitive and compulsive behavior and commits the offender to the Adult Diagnostic and Treatment Center and if upon release from confinement the appropriate county prosecutor determines pursuant to N.J.S.A. 2C:7-8 that the offender is a high risk to re-offend and the appropriate court affirms the determination of the county prosecutor, the offender serving a special sentence of parole supervision for life shall, in

addition to the conditions specified in (d), (e) and (g) above, submit every two years to an evaluation at the Adult Diagnostic and Treatment Center and participate in and successfully complete any program of counseling or therapy identified by treatment staff.

(i) If the sentencing court determines that the conduct of the person convicted of an offense specified in (a) above was characterized by a pattern of repetitive and compulsive behavior and if upon release from confinement the appropriate county prosecutor determines pursuant to N.J.S.A. 2C:7-8 that the offender is a high risk to re-offend and the appropriate court affirms the determination of the county prosecutor, the offender serving a special sentence of community supervision for life shall, in addition to the conditions specified in (d), (e), (g) and (h) above shall refrain from the use of alcohol.

(j) Prior to an offender, subject to the provision of N.J.S.A. 2C:43-6.4, being released from custody at the expiration of the term of incarceration or being terminated from parole supervision, the appropriate Board panel shall issue a written certificate which shall be delivered to the offender by a designated representative of the Board.

(k) If the sentencing court suspends the imposition of sentence and the offender immediately commences the service of the special sentence of parole supervision for life the appropriate Board panel shall issue, as soon as administratively possible, a written certificate which shall be delivered to the offender by a designated representative of the Board.

(l) The certificate shall include the conditions of parole supervision for life as specified in (d), (e), (g), (h) and (i) above and any special condition established by the Board panel.

(m) At the time of delivery of the certificate, the conditions of parole supervision for life shall be explained to the offender.

(n) The offender shall be required to acknowledge, in writing, receipt of the certificate. If the offender refuses to acknowledge, in writing, receipt of the certificate, the designated Board representative shall make a written record of the delivery of the certificate and the refusal of the offender to acknowledge receipt of the certificate.

(o) Additional special conditions may be imposed by the District Parole Supervisor, an Assistant District Parole Supervisor or the designated representative of the District Parole Supervisor when it is the opinion that such conditions would reduce the likelihood of recurrence of criminal behavior. The offender and the Board shall be given written notice upon the imposition of a special condition.

1. Except as provided in (o)4 below, a special condition imposed pursuant to this subsection shall be deemed effective on the date of imposition.

2. A special condition imposed pursuant to this subsection shall remain in effect, except as provided in (o)3 below, until modified or vacated by the District Parole Supervisor, or Assistant District Parole Supervisor or the designated representative of the District Parole Supervisor.

3. Upon notice being received by the Board, the appropriate Board panel upon review may determine to vacate or modify the special condition. The Board panel shall notify the District Parole Supervisor in writing of its determination.

4. A special condition requiring the offender to notify an employer or intended employer of his or her parole supervision for life status and criminal record shall not be deemed effective until affirmed by the appropriate Board panel.

(p) As authorized by N.J.S.A. 30:4-123.51b(c), an offender's parole supervision for life status may be revoked for a violation of any condition of supervision and the offender returned to custody in accordance with the provisions of N.J.S.A. 30:4-123.60 to 123.63 and 123.65 and the provisions of N.J.A.C. 10A:71-7 as appropriate.

(q) If an offender's parole supervision for life status is revoked by the appropriate Board panel and the offender is returned to custody, the offender shall serve the following time period in confinement upon the initial revocation:

1. Eighteen months if the offender has committed a crime of the first degree;

2. Sixteen months if the offender has committed a crime of the second degree; or

3. Fourteen months if the offender has committed a crime of the third degree;

4. Twelve months if the offender has committed a crime of the fourth degree or any other offense, or violated any other condition of supervision.

(r) For each subsequent revocation of an offender's parole supervision for life status, the offender shall serve an additional time period of two months in excess of the term imposed for the initial or a subsequent revocation regardless of the basis for the initial or subsequent revocation action. Any time period established upon the revocation of an offender's parole supervision for life status shall not, pursuant to N.J.S.A. 30:4-123.51b(c), exceed 18 months.

(s) The time period established pursuant to (q) or (r) above shall not, pursuant to N.J.S.A. 30:4-123.51b(c), be reduced by commutation time for good behavior (N.J.S.A. 30:4-140) or credits for diligent application of work and other institutional assignments (N.J.S.A. 30:4-92).

(t) In accordance with N.J.S.A. 30:4-123.51b(c), the time period to be served pursuant to (q) or (r) above shall not for the purpose of establishing a primary parole eligibility date pursuant to N.J.S.A. 30:4-123.51(h) be aggregated with a term of imprisonment imposed on the offender for the commission of any other offense.

(u) Upon the completion of the time period established pursuant to (q) or (r) above, the offender shall be released from confinement unless the offender is serving a sentence of incarceration for another crime. Upon the offender being released from confinement the offender shall remain under parole supervision for life.

(v) An offender shall remain under parole supervision for life until such time as the appropriate court shall terminate the supervision status pursuant to N.J.S.A. 2C:43-6.4(c).

(w) The search of an offender serving a special sentence of parole supervision for life shall be conducted in accordance with N.J.A.C. 10A:72- 6.

SUBCHAPTER 7. REVOCATION OF PAROLE

NJ ADC 10A:71-7.7

10A:71-7.7 Preliminary hearing; notice of hearing

(a) - (b) (No change.)

(c) Such notice shall inform the parolee of the purpose of the hearing; the violation(s) of parole conditions alleged; the time, date, place and circumstances of the alleged violation(s); the possible action which may be taken as a result of revocation proceedings; and the following rights to which the parolee shall be entitled at the preliminary hearing:

1. (No change.)

2. The right to representation by an attorney or such other qualified person as the parolee may retain, or if the parolee is determined to be indigent, the right to representation by an attorney assigned [from the list maintained in accordance with R.3:27-2,] pursuant to the pro bono assignment program, provided the parolee first makes such a request based on a timely and colorable claim that:

i.-ii. (No change.)

3.-8. (No change.)

NJ ADC 10A:71-7.9

10A:71-7.9 Status of parolee pending parole revocation hearing

(a) The hearing officer shall [immediately withdraw] order the immediate withdrawal of the warrant, except as provided in (b) below, if he or she determines that:

1.-2. (No change.)

(b)-(f) (No change.)